

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

2010 NOV 30 P 4:00

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ALL 20087 COMMISSION
DOCKET CONTROL

In the matter of:

ENERGETICS, INC., a Nevada corporation;

STEVEN P. GIUFFRIDA and MICHELLE
GIUFFRIDA, husband and wife; and

RODNEY PETERSON and VIRGINIA
PETERSON, husband and wife;

Respondents.

DOCKET NO: S-20648A-09-0010

**NOTICE OF FILING PROPOSED
RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Securities Division ("Division") hereby files its Proposed Recommended Findings of Fact, Conclusions of Law, and Order for consideration by the Administrative Law Judge. In addition, an electronic copy of the Division's recommended order was emailed to the Hearing Division on this date.

RESPECTFULLY SUBMITTED this 30th day of November, 2010.

Aikaterine Vervilos
Attorney for the Securities Division of the
Arizona Corporation Commission

Arizona Corporation Commission

DOCKETED

NOV 30 2010

DOCKETED BY

1 ORIGINAL and 8 copies of the foregoing
2 filed this 30th day of November, 2010, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 30th day of November, 2010, to:

9 Administrative Law Judge Marc Stern
10 Arizona Corporation Commission
11 1200 W. Washington St.
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed
14 this 30th day of November, 2010, to:

15 Steven P. Giuffrida
16 P.O. Box 390
17 Port Jefferson Station, New York 11776

18 Michelle Giuffrida
19 13543 E. Bayview Drive
20 Scottsdale, Arizona 85259

21 Energetics, Inc.
22 5425 E. Bell Rd., Suite 101
23 Scottsdale, Arizona 85254

24 Karen Houk
25
26

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 **IN THE MATTER OF:**

9 **ENERGETICS, INC., a Nevada corporation;**

10 **STEVEN P. GIUFFRIDA and MICHELLE**
11 **GIUFFRIDA, husband and wife;**

12 **RODNEY PETERSON and VIRGINIA**
13 **PETERSON, husband and wife;**

14 **Respondents.**

DOCKET NO. S-20648A-09-0010

DECISION NO. _____

**RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

15 **DATES OF PRE-HEARING CONFERENCES:**

February 25, 2009; April 2, 2009; May 7,
2009; November 19, 2009; May 20, 2010

16 **DATE OF HEARING:**

September 28, 2010

17 **PLACE OF HEARING:**

Phoenix, Arizona

18 **ADMINISTRATIVE LAW JUDGE:**

Marc E. Stern

19 **APPEARANCES:**

Ms. Aikaterine Vervilos, Staff Attorney, on
behalf of the Securities Division of the
Arizona Corporation Commission

20 **BY THE COMMISSION:**

21 On January 12, 2009, the Securities Division ("Division") of the Arizona Corporation
22 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against
23 Energetics, Inc. ("Energetics"), Steven P. Giuffrida, and Michelle Giuffrida (collectively
24 "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act
25 ("Act") in connection with the offer and sale of securities.
26

1 The Respondents were duly served with a copy of the Notice.

2 On January 23, 2009, Charles Berry, Esq., filed a Notice of Appearance on behalf of
3 Respondents and requested a hearing.

4 On January 27, 2009, by Procedural Order, a pre-hearing conference was scheduled for
5 February 25, 2009.

6 On February 13, 2009, counsel for Respondents filed an Answer.

7 On February 25, 2009, counsel representing the Division and counsel for Respondents
8 appeared before Administrative Law Judge Marc Stern ("ALJ Stern") at a pre-hearing conference.

9 On February 26, 2009, by Procedural Order, a status conference was scheduled for April 2,
10 2009.

11 On March 24, 2009, Charles Berry, Esq, counsel for Respondents, filed an Application for
12 Withdrawal of Counsel of Record ("Application") to withdraw as counsel of record for the
13 Respondents. Counsel further stated that he had provided notice to the Respondents of pending
14 matters related to the case, such as discovery, and the previously scheduled Examination Under
15 Oath of Respondent Giuffrida.

16 On April 1, 2009, by Procedural Order, the Application of counsel was granted.

17 On April 2, 2009, a status conference was held and Respondent Giuffrida appeared on his
18 own behalf.

19 On April 3, 2009, by Procedural Order, a status conference was scheduled for May 7, 2009.

20 At the status conference held on May 7, 2009, the Division appeared with counsel and
21 attorney Jeff Proper entered an appearance on behalf of Respondents. Following the status
22 conference, a Procedural Order was issued setting a hearing for October 13, 2009.

23 On July 15, 2009, the Division filed a Motion to Amend the Notice filed on January 12,
24 2009, seeking to add Rodney and Jane Doe Peterson ("Peterson Respondents").

25 On July 30, 2009, counsel for Respondents Giuffrida and Energetics filed a response
26 indicating that they did not oppose the proposed amendment to the Notice.

1 On August 4, 2009, the Division filed a First Amended Notice.

2 On August 18, 2009, and August 31, 2009, Respondents Giuffrida and Energetics filed a
3 request for hearing and Answer to the First Amended Notice, respectively.

4 On September 3, 2009, by Procedural Order, it was ordered that all prior orders remain in
5 effect with respect to the hearing dates previously set.

6 On September 8, 2009, the Division and Respondents Giuffrida and Energetics filed a Joint
7 Stipulation to Continue Hearing and the Exchange of Witness Lists and Exhibits ("Joint
8 Stipulation") due to the addition of the Peterson Respondents.

9 On September 9, 2009, the Joint Stipulation was granted and the hearing date was vacated.
10 A status conference was scheduled for November 19, 2009.

11 On September 28, 2009, Attorney Ron Kilgard of Keller Rohrback, P.L.C. filed a request
12 for hearing on behalf of Respondent Rodney Peterson.

13 On September 30, 2009, by Procedural Order, the hearing date was vacated and
14 Administrative Law Judge Stern requested that the newly added Respondent, Rodney Peterson, be
15 provided with notice of the present status of the proceeding and with notice of the status
16 conference scheduled for November 19, 2009.

17 On October 23, 2009, Maureen Beyers of Osborn Maledon, P.A., filed a Notice of
18 Appearance and Motion for Extension of Time on behalf of Respondents Rodney and Virginia
19 Peterson.

20 On October 29, 2009, by Procedural Order, the requested extensions were granted, and
21 Attorney Ron Kilgard was permitted to withdraw from the representation of the Peterson
22 Respondents. It was further ordered that the status conference take place as was previously
23 ordered on November 19, 2009.

24 At the November 19, 2009, status conference, the Division and Respondents appeared
25 through counsel and a hearing was requested.

26 On November, 20, 2009, by Procedural Order, a hearing was scheduled on May 4, 2010.

1 On April 23, 2010, the Division filed a Motion to Continue the May 4, 2010, hearing
2 because the Division had reached a tentative settlement with the Peterson Respondents.

3 On April 27, 2010, by Procedural Order, the hearing was continued and a pre-hearing
4 scheduled for May 20, 2010.

5 On May 13, 2010, the Commission approved a Consent Order with respect to the Peterson
6 Respondents.

7 On May 24, 2010, by Procedural Order, the hearing was re-scheduled to begin on
8 September 28, 2010.

9 On August 25, 2010, counsel for the Respondents filed a Motion to Withdraw from the
10 proceeding and represented that the Respondents had been advised of the upcoming hearing
11 related to the allegations contained in the First Amended Notice. Counsel for Respondents also
12 included an Arizona address for the Respondents.

13 On August 31, 2010, the Division filed a response indicating that it did not object to the
14 Motion to Withdraw.

15 On September 2, 2010, by Procedural Order, counsel for Respondents was granted leave to
16 withdraw and the hearing was ordered to be held as previously scheduled.

17 On September 23, 2010, Respondent Giuffrida filed a request for a six month continuance
18 of the hearing date citing personal difficulties. The Division objected pointing out the age of the
19 proceeding, the untimely nature of the request, and the fact that the Division would still be
20 required to proceed against Mrs. Giuffrida and Energetics if Respondent Giuffrida's request was
21 granted.

22 On September 27, 2010, by Procedural Order, Respondent Giuffrida's motion was denied.

23 On September 28, 2010, the hearing was convened as scheduled before a duly authorized
24 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division was
25 represented by counsel. The Respondents were neither present nor represented by counsel. During
26

1 the hearing, two witnesses testified. The proceeding was concluded and counsel for the Division
2 agreed to file a Recommended Opinion and Order.

3 * * * * *

4 Having considered the entire record herein and being fully advised in the premises, the
5 Commission finds, concludes, and orders that:

6 **FINDINGS OF FACT**

7 1. Respondent Giuffrida is an individual who resided in Arizona. (*Respondents'*
8 *Answer admitting paragraph 3 filed September 2, 2009, and Ex. S-9.*)

9 2. Respondent Michelle Giuffrida is an individual and the spouse of Respondent
10 Giuffrida. (*Respondents' Answer admitting paragraph 5 filed September 2, 2009, and Ex. S-9*)

11 3. Energetics is a Nevada corporation with a principal place of business in Scottsdale,
12 Arizona. Energetics was incorporated on or about June 28, 2006. (*Respondents' Answer admitting*
13 *paragraph 2 filed September 2, 2009*)

14 4. In support of the allegations raised in the Notice with respect to Respondent
15 Giuffrida's and Energetics' alleged violations of the Act, the Division called the following two
16 witnesses: Respondent Rodney Peterson ("Respondent Peterson") and Division Special
17 Investigator Gary Clapper ("Special Investigator Clapper").

18 5. Respondents Giuffrida and Energetics offered to potential investors and sold to
19 investors an opportunity to participate in Energetics' development of certain oil wells that were
20 subject to the terms of a lease agreement known as the "Sentell Lease." (*Exs. S-3, S-6, S-8, S-24, S-*
21 *27, and S-29*) Energetics acquired the rights to the Sentell Lease from Sovereign Advisory, LLC
22 pursuant to the terms of an assignment and subsequent Asset Purchase Agreement. (*Ex. S-14*)

23 6. Energetics, through its solicitation materials and Respondents Giuffrida and
24 Peterson, told four investors and potential investors that the investment opportunity was comprised
25 of two parts, a promissory note secured by a UCC-1 filing in the lease and existing surface
26 equipment, and a royalty agreement. (*Exs. S-3, S-6, S-8, S-24, S-27, and S-29*) The promissory

1 note promised an interest rate of 11 percent per year and matured in one year. (*Respondents'*
 2 *Answer admitting paragraph 16 filed September 2, 2009*) The royalty agreement set forth that the
 3 investor would be paid a percentage of the total profit received from production of oil from the
 4 wells that were part of the Sentell Lease. (*Respondents' Answer admitting paragraph 17 filed*
 5 *September 2, 2009*)

6 7. In exchange for the investors' funds, the investors received both the promissory note
 7 and royalty agreement. (*Exs. S-6, S-8, S-24, S-27, and S-29*) The investors had no role other than
 8 to fund the investment. (*Ex. S-3, S-6, S-8b, S-8c, S-27*)

9 8. On or about October 23, 2008, Energetics Special Investigator Clapper testified he
 10 became aware of Energetics after seeing an advertisement on the Internet website known as Craig's
 11 List/Phoenix ("Craig's List") seeking investors. (*Tr. at p. 39, l. 7*) Respondents Giuffrida and
 12 Energetics placed the following advertisement on Craig's List:

13 GREAT INVESTMENT
 14 OPPORTUNITY*QUICK PAYBACK+OIL
 15 ROYALTY INTEREST (oil city)

16 Energetics Inc. offers a 1 year note at 11% along with the assignment of a long term
 17 royalty interest. The note will be collateralized by a ucc filing on a 370 acre oil
 lease along with existing surface equipment. This lease has a proven 50+ year
 history with a recent geology report confirming 900,000 barrels of oil reserves.

18 -1 year note 11% preferred. (Interest guaranteed/regardless of early payback)
 19 -UCC filed in lenders name on lease and existing surface equipment
 20 -Royalty interest on lease projected to yield an incentive bonus of an additional 15-
 35% (based on oil prices) for the lifetime of the wells which can be 50+ years.
 21 -\$75,000 Maximum.....\$25,000 minimum.

(*Ex. 2 and Respondents' Answer admitting paragraph 23 filed September 2, 2009*)

22 9. The Craig's List advertisement included a contact name, an Arizona contact phone
 23 number of (480) 609-2110, and the website address of Energetics at www.energetics-inc.com. (*Tr.*
 24 *at p. 39, l. 3 to p. 48, l. 20*) (*Exs. 2 and 3*) (*Respondents' Answer filed September 2, 2009*)

25 10. In response to the Craig's List advertisement, Special Investigator Clapper testified
 26 that he contacted Energetics, via e-mail, on or around October 27, 2008. (*Tr. at p. 41 ll. 14-25, p.*

1 42 ll. 1-3 and Ex. S-2) Respondent Giuffrida responded to Special Investigator Clapper's email on
2 October 27, 2008. (Ex. 2)

3 11. Respondent Giuffrida forwarded solicitation materials to Special Investigator
4 Clapper that included information about Energetics, the investments, and a form of promissory
5 note and a royalty agreement. (Tr. at p. 39, l. 3 to p. 48, l. 20) (Exs. 2 and 3) (Respondents' Answer
6 filed September 2, 2009)

7 12. The solicitation materials described Energetics as being in the business of
8 developing oil and gas reserves in the United States. (Ex. S-3) However, Respondent Peterson
9 testified that Energetics was a startup company. (Tr. at p. 20, ll. 16-17) Respondent Peterson
10 testified that the primary purpose for Energetics seeking investor money was to "develop and
11 reestablish oil production on the Sentell Lease." (Tr. at p. 21, ll. 16-22)

12 13. Respondent Peterson further testified that Energetics initially had no financial
13 assets. (Tr. at p. 20, ll. 16-17) Respondent Peterson testified further that Energetics acquired "cash
14 as a direct result of monies that came in, investment monies that came in." (Tr. at p. 20, ll. 12-13)

15 14. The solicitation materials forwarded to Special Investigator Clapper did not mention
16 that Energetics was a startup company or that its sole source of capital consisted of cash received
17 from investors. (Ex. S-3)

18 15. Respondent Peterson testified that investors were not informed as to the financial
19 condition of Energetics. (Tr. at p. 29, ll. 13-24)

20 16. The solicitation materials stated that the project was the "Sentell 2008-1 Joint
21 Venture," which is the Sentell Lease. There are multiple oil wells that are a part of the Sentell
22 Lease. (Ex. S-18) All the oil wells are located in the Parish of Caddo, State of Louisiana. (Ex. S-
23 8d).

24 17. Energetics did not make timely payments on the Sentell Lease. In a letter dated
25 March 12, 2008, a New York company, Sovereign Advisory, LLC, advised Energetics that the
26

1 Sentell Lease was assigned to Energetics on July 31, 2007. (*Ex. S-8d*) The letter further stated that
2 Energetics was in default of the promissory note that evidenced the Sentell Lease assignment. (*Id.*)

3 18. Subsequently and despite the alleged default of the Sentell Lease assignment,
4 Energetics entered into an Asset Purchase Agreement (“Asset Purchase Agreement”) dated April
5 21, 2008, with Sovereign Advisory, LLC for the Sentell Lease for \$370,000. According to the
6 terms of the Asset Purchase Agreement, Energetics was to make a payment of \$50,000 and then
7 execute a promissory note in favor of Sovereign Advisory, LLC for the remaining \$320,000. The
8 \$320,000 would be due on or before December 31, 2008. (*Exs. S-8d and 14*)

9 19. Energetics paid Sovereign Advisory a total of \$100,000 towards the \$370,000
10 Energetics owed for the Sentell Lease. (*Ex. S-10*) Energetics made four payments to Sovereign
11 Advisory, LLC that coincided with investor deposits. (*Id.*) The last payment made to Sovereign
12 Advisory, LLC was on or about September 10, 2008. (*Id.*)

13 20. The solicitation materials provided to Special Investigator Clapper from Respondent
14 Giuffrida and Energetics showed projected net revenues based on an average of ten barrels per day
15 per well of oil production. (*Ex. S-3*)

16 21. However, Special Investigator Clapper testified he reviewed the oil well production
17 history available from the Louisiana Department of Natural Resources. (*Tr. at p. 76, ll. 10-19*)
18 Special Investigator Clapper found that the wells from the Sentell Lease produced very little oil.
19 (*Tr. at p. 77, ll. 9-23*)(*Exs. 30a-h*)

20 22. Furthermore, Respondent Peterson testified that around April 2008, only one of the
21 wells subject to the Sentell Lease was functioning. Respondent Peterson explained that the other
22 wells that were the subject of the Sentell lease were old and “had intermittent problems dealing
23 with electricity, dealing with mechanical pump failures and a variety of other just normal operating
24 problems associated with old wells.” (*Tr. at p. 22, ll. 15-24*)

25 23. Additionally, on or about July 20, 2008, Energetics sold approximately 74 barrels of
26 oil. (*Ex. 18*) Respondent Peterson testified that less than half of the 74 barrels of oil were from the

1 wells. (*Tr. from p. 23, l. 7 to p. 25, l. 13*) (*Ex. S-13*) The remaining barrels of oil were from a
2 storage tank on the property. (*Id.*)

3 24. Special Investigator Clapper testified that the investors were not told about the
4 production issues with the wells. (*Tr. at p. 66, ll. 18-24*)

5 25. The solicitation materials Respondent Giuffrida sent to Special Investigator Clapper
6 did not include information about the problems operating the oil wells and the production of the oil
7 wells. (*Ex. S-3*)

8 26. Special Investigator Clapper testified that he reviewed Energetics' website, and it
9 contained information similar to the information that he received from Respondents Giuffrida. (*Tr.*
10 *at p. 49, ll. 10-25, p. 50, ll. 1-11*) The website contained information about a general understanding
11 of oil and gas investment tax incentives, one-year notes with interest, collateral, and royalty
12 agreements, an offering on a lease with significant projected returns, and the benefits of investing
13 in oil and gas. (*Tr. at p. 51, ll. 5-15 and Ex. S-4*)

14 27. The website also did not mention information about the problems operating the oil
15 wells and the production of the oil wells. (*Id.*)

16 28. During his investigation, Special Investigator Clapper learned that from April 2008
17 until at least September 2008, four investors deposited \$225,000 with Energetics to invest in the
18 development of the oil wells that were the subject of the Sentell Lease. (*Exs. S-8a-d, S-9, S-10,*
19 *and S-12*)

20 29. The promissory note and royalty agreements received by the investors were similar
21 to those received by Special Investigator Clapper. (*Exs. S-3, S-8a-d, S-9, S-10, and S-12*)

22 30. The Division received Energetics' Arizona bank records from Respondent
23 Giuffrida. (*Exs. S-9, S-10, and S-12*) Respondent Giuffrida and Respondent Peterson were the only
24 signatories on the Arizona bank accounts. (*Ex. S-9 at p. 25, ll. 1-8*)

25 31. Energetics' Arizona bank records showed the deposits of investors' funds, payments
26 to Sovereign Advisory, and wire transfers and checks written and approved by both Respondent

1 Giuffrida and Respondent Peterson, including checks to each other. (*Ex. S-10.*) The checks written
2 to Respondent Giuffrida and Respondent Peterson were advances to pay personal bills. (*Tr. at p.*
3 *70, ll. 5-25, p. 71, ll. 1-11*) (*Ex. S-9*) The investor funds received into the Energetics' bank
4 account and subsequently disbursed to Respondent Giuffrida, represented his sole source of
5 income. (*Tr. at p. 64, l. 23 to p. 65, l. 5*) (*Ex. S-9*)

6 32. Special Investigator Clapper testified that he reviewed Energetics' corporate records
7 from the Nevada Secretary of State and learned that Respondent Giuffrida was a director, secretary,
8 and treasurer of Energetics. (*Tr. at p. 52, ll. 8-25, p. 53, ll. 2-13*)(*Exs. S-5a and S-5b*) In addition,
9 Respondent Giuffrida became Energetics' president in October 2008. (*Respondents' Answer*
10 *admitting paragraph 4 filed September 2, 2009.*) After Respondent Giuffrida became president, he
11 did not report to anybody. (*Ex. S-9 at p. 47, ll. 1-3*)

12 33. Respondent Peterson testified that, from April 2008 through September 2008, he
13 was both the chief operating officer and a member of the board of directors for Energetics. (*Tr. at*
14 *p. 12, ll. 5-19*). Respondent Peterson resigned his positions with Energetics effective September
15 15, 2008. (*Tr. at p. 32, ll. 18-21 and Ex. S-21*)

16 34. According to Respondent Peterson, Respondent Giuffrida was a member of the
17 board of directors for Energetics. (*Tr. at p. 12, ll. 20-25; p. 13, l. 2*)

18 35. Respondent Peterson also testified that Respondent Giuffrida was Energetics'
19 corporate secretary. (*Tr. at p. 13, ll. 13-18*)

20 36. Respondent Giuffrida was listed on Energetics' website as the vice president of
21 operations and director. (*Tr. at p. 50, ll. 15-20 and Ex. S-4*)

22 37. Respondent Peterson testified that Respondent Giuffrida was involved in the day-to-
23 day operations of Energetics. (*Tr. at p. 15, ll. 8-13*)

24 38. Respondent Peterson further testified that he and Respondent Giuffrida had
25 meetings in their Phoenix office and both made decisions on behalf of the company. (*Tr. at p. 15,*
26 *ll. 23-25; p. 16, ll. 1-16*) Respondent Peterson testified that, besides himself, Respondent

1 Giuffrida, and Frank Giuffrida, there were no other persons in the office. (*Tr. at p. 16, ll. 10-25 to*
2 *p. 17, ll. 1-2*) However, Frank Giuffrida lived in New York and was only in the Scottsdale office
3 occasionally. (*Id.*)

4 39. The record established that from at least April 2008 through at least October 2008,
5 Respondents Giuffrida and Energetics, offered and/or sold its investment program consisting of
6 promissory notes and royalty agreements from Arizona and by means of one internet site,
7 www.energetics-inc.com.

8 40. Based upon a review of the evidence in its entirety, we find from the preponderance
9 of the evidence that Respondents Energetics and Giuffrida, as unregistered dealers/salesmen, were
10 engaged in an unregistered offering and sale of securities in the form of investment contracts.

11 41. Respondents Energetics and Giuffrida engaged in fraudulent activity in the offer and
12 sale of securities in Arizona, in violation of A.R.S. § 44-1991, by failing to tell investors and a
13 potential investor that Energetics' sole source of capital was investor funds and that Energetics
14 made payments due on the Sentell Lease using investor funds. Furthermore, Giuffrida and
15 Energetics failed to tell the investors and a potential investor about the production and operational
16 issues with the oil wells that were part of the Sentell Lease.

17 42. Respondent Giuffrida directly or indirectly controlled Energetics within the
18 meaning of A.R.S. § 44-1999. Based on the Nevada corporate records, Respondent Giuffrida was a
19 director, secretary and treasurer for Energetics. Furthermore, Respondent Giuffrida was involved in
20 the day-to-day operations of Energetics and was listed as a director and Vice President of Operations
21 on the company's website. Respondent Giuffrida then became Energetics' president once Respondent
22 Peterson resigned. Respondent Giuffrida presented no evidence to the contrary. Therefore,
23 Respondent Giuffrida is jointly and severally liable under A.R.S. § 44-1999 to the same extent as
24 Energetics for its violations of A.R.S. § 44-1991.

25 43. With respect to Michelle Giuffrida, we find that community property law presumes
26 the marital community benefited from the offering. Based on the record, Respondent Giuffrida had

1 no income other than what he received from Energetics. According to Respondent Giuffrida, the
2 funds he received were used to pay personal bills. The Respondents presented no evidence to rebut
3 that presumption. Therefore, the marital community of Steven and Michelle Giuffrida should be
4 held liable with respect to the payment of restitution and administrative penalties ordered
5 hereinafter.

6 CONCLUSIONS OF LAW

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution, and the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.*

9 2. Respondents Energetics and Steven Giuffrida offered and sold securities in the form
10 of investment contracts within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-
11 1801(26).

12 3. Respondents Energetics and Steven Giuffrida violated A.R.S. § 44-1841 by offering
13 and selling securities within or from Arizona that were neither registered nor exempt from
14 registration.

15 4. Respondents Energetics and Steven Giuffrida acted as dealers within the meaning of
16 A.R.S. § 44-1801(9).

17 5. Respondents Energetics and Steven Giuffrida offered and sold securities within or
18 from Arizona without being registered as dealers in violation of A.R.S. § 44-1842.

19 6. Respondents Energetics and Steven Giuffrida offered and sold securities in violation
20 of A.R.S. § 1991 by (A) employing a device, scheme, or artifice to defraud; (B) making untrue
21 statements of material fact or omitting to state material facts that are necessary in order to make the
22 statements made not misleading in light of the circumstances under which they are made; and (C)
23 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
24 or deceit upon a potential investor and investors. The conduct of Respondents Energetics and
25 Giuffrida included failing to tell the investors and a potential investor about the financial condition
26 of Energetics, such that Energetics was startup company and that its sole source of capital

1 consisted of cash received from investors. Furthermore, both potential and actual investors were
2 not told about the condition of the oil wells on the property and the production issues with the oil
3 wells.

4 7. Respondent Giuffrida directly or indirectly controlled Energetics within the
5 meaning of A.R.S. § 44-1999. Therefore, Respondent Giuffrida is jointly and severally liable under
6 A.R.S. § 44-1999 to the same extent as Energetics for its violations of A.R.S. § 44-1991.

7 8. Respondents Energetics and Steven Giuffrida's conduct is grounds for a cease and
8 desist order pursuant to A.R.S. § 44-2032.

9 9. The actions and conduct of Respondents Energetics and Steven Giuffrida constitute
10 multiple violations of the Act and are grounds for an order of restitution pursuant to A.R.S. § 44-
11 2032 and for an Order assessing administrative penalties pursuant to A.R.S. § 44-2036.

12 10. Respondent Steven Giuffrida acted for the benefit of the marital community and,
13 pursuant to A.R.S. §§ 25-214 and 25-215, any restitution and administrative penalties ordered
14 hereinafter is a debt of the marital community of Steven Giuffrida and Michelle Giuffrida.

15 ORDER

16 IT IS THEREFORE ORDERED, that pursuant to the authority granted to the Commission
17 under § 44-2032, Respondents Energetics, Inc. and Steven Giuffrida shall cease from their actions
18 described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

19 IT IS FURTHER ORDERED, that pursuant to the authority granted to the Commission
20 under A.R.S. § 44-2032, that Respondents Energetics, Inc., and Steven Giuffrida, and the marital
21 community of Steven Giuffrida and Michelle Giuffrida, to the extent allowable pursuant to A.R.S.
22 § 25-215, jointly and severally with Respondents Rodney Peterson and Virginia Peterson under
23 Decision No. 71697, shall make restitution in an amount of \$225,000 which restitution shall be
24 made pursuant to A.A.C. R14-4-308 subject to legal setoffs for restitution payments made by any
25 Respondent under this Docket Number and confirmed by the Director of Securities. Restitution
26 shall be made within 90 days of the effective date of this Decision.

1 IT IS FURTHER ORDERED that the Commission shall disburse the funds on a pro-rata
2 basis to investors shown on the records of the Commission. Any restitution funds that the
3 Commission cannot disburse because an investor refuses to accept such payment, or any restitution
4 funds that cannot be disbursed to an investor because the investor is deceased and the Commission
5 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving
6 at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors
7 shown on the records of the Commission. Any funds that the Commission determines it is unable
8 to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

9 IT IS FURTHER ORDERED, pursuant to authority granted to the Commission under
10 A.R.S. § 44-2036, that Respondents Energetics, Inc. and Steven Giuffrida, and the marital
11 community of Steven Giuffrida and Michelle Giuffrida, to the extent allowable pursuant to A.R.S.
12 § 25-215, jointly and severally, shall pay as an administrative penalty in the amount of \$25,000.
13 The payment obligations for these administrative penalties shall be subordinate to any restitution
14 obligations ordered herein and shall become immediately due and payable only after restitution
15 payments have been paid in full or upon Respondents' default with respect to Respondents'
16 restitution obligations.

17 IT IS FURTHER ORDERED that payment shall be made to the "State of Arizona" and
18 presented to the Arizona Corporation Commission for deposit in the general fund for the State of
19 Arizona.

20 IT IS FURTHER ORDERED that if Respondents Energetics, Inc., Steven Giuffrida, and
21 Michelle Giuffrida, fail to pay the administrative penalty ordered hereinabove, any outstanding
22 balance plus interest at the maximum level amount may be deemed in default and shall be
23 immediately due and payable, without further notice.

24 IT IS FURTHER ORDERED that if Respondents Energetics, Inc., Steven Giuffrida, and
25 Michelle Giuffrida fail to comply with this order, any outstanding balance shall be in default and
26

1 shall be immediately due and payable without notice or demand. The acceptance of any partial or
2 late payment by the Commission is not a waiver of default by the Commission.

3 IT IS FURTHER ORDERED that default shall render Respondents Energetics, Inc., Steven
4 Giuffrida, and Michelle Giuffrida liable to the Commission for its cost of collection and interest at
5 the maximum legal rate.

6 ...

7 ...

8 ...

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

1 IT IS FURTHER ORDERED that if Respondents Energetics, Inc., Steven Giuffrida, and
2 Michelle Giuffrida fail to comply with this order, the Commission may bring further legal
3 proceedings against that Respondent, including application to the superior court for an order of
4 contempt.

5 IT IS FURTHER ORDERED that this Order shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

7
8
9 CHAIRMAN

COMMISSIONER

10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this _____ day of
18 _____, 2010.

19
20
21 ERNEST G. JOHNSON
22 EXECUTIVE DIRECTOR

23
24 DISSENT

25
26 DISSENT

27 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
28 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(AV)